Poly-America, Inc. *and* Union of Needletrades, Industrial and Textile Employees. Case 16–CA–18366

May 28, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On December 3, 1997, Administrative Law Judge Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed a brief in response, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below and to adopt the recommended Order, which is modified to reflect the amended remedy.[2]

1. The judge found that the Respondent's dye shop leadmen, Lupe Rivera, Andy Farmer, and Lee Marsh, and its reprocessing department junior foreman, Mike Wichter, were agents of the Respondent because they were "the authoritative communicators of information on behalf of management regarding safety, housekeeping, quality control, and production matters," and that "the employees would reasonably view the leadsmen as agent[s] of management on other employment related matters." Contrary to the Respondent's exceptions, and for the additional reasons discussed below, we affirm the judge's agency findings.

It is well established that apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for that party to believe that the principal has authorized the alleged agent to perform the acts as to which agency is alleged. See generally *Dentech Corp.,* 294 NLRB 924 (1989); *Service Employees Local 87 (West Bay),* 291 NLRB 82 (1988). Thus, in determining whether statements made by individuals to employees are attributable to the employer, the test is whether, under all the circumstances, the employees "would reasonably believe that the employee in question [the alleged agent] was reflecting company policy and speaking and acting for management." *Waterbed World,* 286 NLRB 425, 426–427 (1987).

Here, the record shows that virtually all of the information and or directions emanating from the Respondent's managers to the employees flowed down to them through the leadmen or the junior foreman. In the case of the dye shop, this was accomplished in the weekly meetings held by the leadmen with the dye crew employees. These employees were informed of the weekly work schedules as developed by the Overall Shop Supervisor James Qualls and about any upcoming jobs or other plans and/or revisions to such things as the Respondent's required toolbox lists. Qualls also testified that because of his responsibility for two departments, he is not in the dye shop on a daily basis. Further, we note that the judge found that the employees, and especially the Spanish-speaking employees, had little if any contact with the admitted supervisors, who spoke mostly English, and if these employees had problems they went to their leadmen or the junior foreman who, in turn, communicated the problems to management and vice versa. Therefore, because we agree with the judge that the Respondent used these individuals as conduits for relaying to the employees decisions, directions, and views of the Respondent which could not be directly communicated by the Respondent's supervisors, we find that these employees would reasonably have believed that the leadmen and Junior Foreman Wichter were expressing management's antiunion views and acting on management's behalf when taking action regarding union activities. *Zimmerman Plumbing & Heating,* 325 NLRB 106 (1997).

2. The judge further found that the Respondent's security guards were agents because they were acting under specific directions from the Respondent when they blocked the striking employees from returning to the plant, confiscated union literature from employees outside of the plant, confronted employees Britt Samson and Brian Robinson regarding their union activities, and videotaped employees Samson and Robinson and other employees engaged in union activities. The Respondent contends that it did not direct or authorize the security guards to engage in any of the above described behavior and that what videotaping did occur was merely to document traffic congestion at its entrance gates because of the union organizing activity. Finally, the Respondent contends that there is no record evidence supporting the judge's findings.

Contrary to the Respondent's assertions and for the following reasons, we affirm the judge's findings. Charles Kramer, Respondent's management information

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's 8(a)(1) and (3) findings, we find it unnecessary to pass on any of the judge's findings regarding the alleged unlawful interrogation by Deaun Carpenter, including the judge's finding that Carpenter is a supervisor, because the unlawful interrogation allegation is cumulative and does not affect the remedy.

In adopting the judge's 8(a)(1) finding that Supervisor Jesse Terrazas unlawfully discarded union fliers, we note that the judge did not conclude that Terrazas committed a separate violation of the Act by his statement that he did not want any "trouble" with the fliers.

[2] The judge inadvertently failed to include employees Britt Samson and Brian Robinson in his make-whole remedy and Order for the 3 days they were unlawfully suspended and in par. 2(d) of the Order stated the date of March 7, 1996, instead of November 10, 1996, the date that the first unfair labor practice occurred. We have corrected the remedy and Order accordingly.

service (MIS) manager and the person to whom the security guards reported, testified that the security guards were authorized to request persons to leave who were on the property inappropriately. He also testified that shortly after the union organizing campaign started, he discussed with the guards the Respondent's decision to have them videotape the organizers. Kramer stated that the reason for this decision was the Respondent's concern that there might be an accident because the organizers were creating congestion at some of the entrance ways and were trespassing on the Respondent's property. We find that Kramer's testimony is clearly an admission by the Respondent that it had, in fact, authorized and directed the security guards not only to remove off-duty employees from its premises, but also to videotape its employees and others while engaged in union activities. Therefore, the record evidence supports the judge's finding that the unlawful acts of the security guards were attributable to the Respondent.[3]

The Respondent further contends that if employees Samson and Robinson had not trespassed on its property or been insubordinate in refusing the guard's request that they leave, they would not have been videotaped and ultimately suspended. For the following reasons, we find that contention irrelevant to the question whether the suspensions were lawful.

In *Tri-County Medical Center,* 222 NLRB 1089 (1976), the Board stated that "except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates and other outside nonworking areas will be found invalid," and a violation of Section 8(a)(1). Id at 1089. It is undisputed that employees Samson and Robinson were distributing union literature to other employees in the Respondent's parking lot before their work shift began when they were asked to leave by the Respondent's security guard. The Respondent has failed to demonstrate a valid business reason for barring its employees and, in particular, employees Samson and Robinson, from its nonwork areas during their nonworktime. In addition, because, as found by the judge, the Respondent's no-distribution/no-solicitation rules as applied to its nonwork areas are invalid, the imposition of any discipline for violation of those rules is likewise invalid. Although they were exercising rights protected under Section 7 of the Act, Samson and Robinson did not engage in punishable insubordination when they refused to stop distributing their union literature and leave the Respondent's outside nonwork area. See, e.g., *Postal Service,* 318 NLRB 466 (1995). Furthermore, the Respondent has failed to carry its *Wright Line*[4] burden of showing that, absent Samson and Robinson's union activity, it would have suspended them. Therefore, we agree with the judge that the Respondent violated Section 8(a)(1) and (3) when it enforced its invalid no-solicitation/no-distribution rule by ordering offduty employees Samson and Robinson to leave the premises and by suspending them.

3. The judge found that the Respondent discharged Jason Snow because of his union activities. The Respondent has excepted to this finding arguing that Snow was lawfully discharged at the end of his probationary period for poor performance and that the Respondent had no knowledge of his union activities. Contrary to the Respondent's contentions, we agree with the judge that the Respondent violated Section 8(a)(3) and (1) by discharging Snow.

The judge found and, the record supports, that the Respondent harbored antiunion animus. Further, the judge found that the Respondent knew of Snow's union organizing activities because Snow openly handed out union pamphlets, attended union meetings, and talked with other employees about the Union and because the Union's organizing drive was not a covert operation. We note in addition that Snow was singled out for frequent questioning by the three leadmen whom we have previously found to be agents of the Respondent. It is a reasonable assumption that just as information flowed down from management to the leadmen, information resulting from the leadmen's unlawful questioning of Snow regarding his and other employees' union preferences and activities flowed upward from the leadmen to management, particularly to their immediate supervisor, James Qualls. In fact, Leadman Trinidad Rivera admitted that he knew about Snow's union activities, and the judge specifically discredited Rivera's claim that he did not tell Qualls about Snow's support for the Union.

We find further support for the finding that Snow's discharge was unlawful in the judge's analysis of the Respondent's shifting explanation of its reasons for his discharge. The Respondent first claimed that Snow did not successfully complete his probationary period based on unfavorable end-of-probationary-period evaluations from the three leadmen, but these evaluations were never produced by the Respondent. Later, *after* Snow was discharged and unfair labor practice charges were filed, the Respondent prepared a document stating that Snow was discharged because he failed to get his safety shoes. A third explanation for the discharge was offered at trial by Leadman Rivera, who testified that Snow was not safety oriented because he wore his glasses on the top of his head, that he complained about the work all the time, that he said that he was leaving, and that he was not a hard worker. These after-the-fact, shifting reasons were dis-

[3] We agree with the judge that even though the Respondent contends that it was concerned with traffic congestion, that does not excuse the open filming of employees not involved in traffic congestion but involved in union solicitation.

[4] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

credited by the judge as pretextual.[5] In support of that finding, we note that the Respondent failed to rebut Snow's testimony that none of these reasons were communicated to him at the time of his discharge. Furthermore, the Respondent has failed to produce any documentary evidence showing that Snow was ever notified of or disciplined for these alleged deficiencies. Indeed, the sole document provided by the Respondent to support its claims was prepared specifically by Qualls in anticipation of this litigation. Therefore, we agree with the judge that the Respondent's reasons are pretextual in nature and advanced in an attempt to hide its unlawful motivation for Snow's discharge. See, e.g., *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982); *Shane Felter Industries,* 314 NLRB 339, 342 (1994).

4. Finally, the judge found that Mike Wichter, the Respondent's agent[6] and a junior foreman in its reprocessing department, had violated Section 8(a)(1) when he disparaged the Union by telling the employees that the Union was no good, that it had threatened to burn the plant, and that it would charge up to $300 in weekly or monthly fees. The Respondent contends, inter alia, that Wichter was merely telling the employees some of the disadvantages of union membership and that his comments did not violate the Act because it did not contain any threats of reprisal or promise of benefit. We find merit in the Respondent's exception.

It is well settled that Section 8(c) of the Act gives employers the right to express their views about unionization or a particular union as long as those communications do not threaten reprisals or promise benefits.[7] Here, Wichter was merely sharing with the employees his own negative views about the union. Because these particular comments by Wichter contained no threats or promises, we shall reverse the judge's finding that they violated Section 8(a)(1).

However, we do agree with the judge that Wichter's further comments that the Union would cause the Respondent to lower wages, hours, and overtime and that job security would suffer violated Section 8(a)(1). We find that Wichter's comments crossed the line from merely predicting economic consequences of unionization to threats of reprisal, because there was no lawful explanation based on objective facts as to why such a loss of benefits would occur.[8] We further agree with the judge that Wichter's response to the reprocessing employees' questions as to why they did not receive the promised pay for November 6 violated Section 8(a)(1). Here, Wichter's statement that "now that they were with the Union he [Respondent] had decided not to pay" clearly conveys to the employees that the reason the Respondent withheld the promised pay was to retaliate against them for their involvement with the Union. Further, contrary to the Respondent's contentions that this matter was not fully litigated, the record shows that, not only did Wichter testify on direct examination for the Respondent as to his version of what he said, but employees Hector Vizcarra and Jose Aguilar gave mutually corroborating testimony regarding Wichter's statement. The Respondent's counsel cross-examined them on this without at any time suggesting that their testimony was irrelevant to issues in the case. Moreover, contrary to the Respondent's assertions, there was no representation by counsel for the General Counsel that Vicarra's and Aguilar's testimony on this subject was merely for background purposes.

It is well established that the Board may find and remedy a violation, even in the absence of a specified allegation in the complaint, if the issue is closely connected to the subject matter of the complaint and has been fully litigated. *Pergament United Sales,* 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). The complaint specifically alleged that the Respondent's supervisors and agents threatened its employees with reprisals because of their union activities. We therefore, find a close connection between the additional violation and the subject matter of the complaint, and as shown above, also find that it was fully litigated. Based on the foregoing, we affirm the judge's finding of an additional 8(a)(1) violation. *International Carolina Glass Corp.,* 319 NLRB 171, 174 (1995); *Hi-Tech Cable Corp.,* 318 NLRB 280 (1995).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Poly-America, Inc., Grand Prairie, Texas, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b) and reletter the remaining paragraphs accordingly.

2. Substitute the following for paragraph 2(a) and reletter the subsequent paragraphs.

"(a) Within 14 days of this Order, offer immediate and full reinstatement to the below-named employees to each of their former positions or, if those positions no longer exist to substantially equivalent positions, without prejudice to their seniority or any of the rights or privileges previously enjoyed.

"(b) Make them and Brian Samson and Britt Robinson whole for all loss of earnings and other benefits suffered as a result of the discrimination against them plus inter-

[5] A pretextual defense supports an inference of unlawful motive. *Shattuck Denn Mining Corp. v. NLRB,* 362 F.2d 466, 470 (9th Cir. 1966).

[6] We agree with the judge that the record supports his agency findings. Therefore, we find it unnecessary to pass on or rely on his subsequent reference to Wichter as a supervisor.

[7] *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 617 (1969).

[8] See *Quamco, Inc.,* 325 NLRB 222, 223 fn. 6 (1997).

est, in the manner set forth in the remedy section of the decision:

Jose Gomez	Anselmo Tapia
Jose Hernandez	Hector Vizcarra
Jesus Hernandez	Oscar Ceniceros
Jorge Lopez	Juan Castillo
Juan Lopez	Ubaldo Loya
Audencio Lopez	Noel Lopez
Franscico Cansino	Andrew Morales
Jose Luis Aguilar	Lemuel Garcia
Hipolito Hernandez	Fortunato Ruiz
Pable Lucero	Jason Snow"

3. Substitute the following for relettered paragraph 2(e).

"(d) Within 14 days after service by the Region, post at its facility in Grand Prairie, Texas, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 10, 1996."

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT promulgate and enforce a no-solicitation/no-distribution rule which prohibits employees from engaging in union activities on our premises during break, lunch, before and after work.

WE WILL NOT threaten employees with loss of benefits if they select the Union as their bargaining representative.

WE WILL NOT threaten employees that we had decided to pay employees for time off because of an Immigration and Naturalization (INS) raid but had changed our mind because the employees went to the Union.

WE WILL NOT coercively interrogate employees about their union activities.

WE WILL NOT threaten employees with isolation and discharge if they sign union authorization cards.

WE WILL NOT threaten employees that the Union will force those employees that sign with the Union to strike and engage in picketing.

WE WILL NOT videotape employees' union activities.

WE WILL NOT confiscate union materials from employees.

WE WILL NOT tell employees they have been fired because they engaged in a union and protected concerted work stoppage.

WE WILL NOT threaten employees that we will lose and reopen the plant because of employees' union activities.

WE WILL NOT condition reinstatement of employees that engaged in a union supported, protected concerted work stoppage, upon their responding to the offer of reinstatement within a short specified period of time without proper business justification.

WE WILL NOT selectively trash union materials in the employees' breakroom.

WE WILL NOT discharge, suspend, or otherwise discriminate against employees because they engaged in union or protected concerted activities regarding terms and conditions of employment with their fellow employees or with management, or otherwise engage in protected concerted activities for mutual aid and protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Order, offer reinstatement to the below named employees to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any of the rights or privileges previously enjoyed:

Jose Gomez	Anselmo Tapia
Jose Hernandez	Hector Vizcarra
Jesus Hernandez	Oscar Ceniceros
Jorge Lopez	Juan Castillo
Juan Lopez	Ubaldo Loya
Audencio Lopez	Noel Lopez

Franscico Cansino	Andrew Morales
Jose Luis Aguilar	Lemuel Garcia
Hipolito Hernandez	Fortunato Ruiz
Pable Lucero	Jason Snow

WE WILL make the above named employees and employees Brian Samson and Britt Robinson whole for all loss of earnings and other benefits resulting from our illegal suspensions and discharges less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Order, remove from our files any references to the unlawful terminations of the above named employees and the unlawful November 1996 suspensions of Britt Samson and Brian Robinson and WE WILL, within 3 days thereafter, notify the above named employees including Samson and Robinson in writing that this has been done and that the terminations and suspensions will not be used against them in any way.

POLY-AMERICA, INC.

David Garza, Esq. and *Elizabeth Kilpatrick, Esq.,* for the General Counsel.

David Dargene, Esq. and *John Smart, Esq.,* of Dallas, Texas, for the Respondent.

DECISION

PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Ft. Worth, Texas, on July 21, 22, and 23, 1997. The charge was filed on December 5, 1996, and amended on January 14 and April 2, 1997. A complaint issued on April 4, 1997.

Respondent, the Union, and the General Counsel were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent, the Charging Party, and the General Counsel filed briefs. on consideration of the entire record and briefs, I make the following findings

I. JURISDICTION

Respondent admitted that at material times it has been a Texas corporation with a place of business in Grand Prairie, Texas, where it has been engaged in the manufacture of plastic products such as plastic bags and tarpaulins; that during the 12 months before complaint issued, in conducting those manufacturing operations, it purchased and received at its Grand Prairie facility goods valued in excess of $50,000 directly from points outside Texas; and that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

II. LABOR ORGANIZATION

Respondent admitted that the Charging Party (the Union) has been a labor organization at all material times, within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE ALLEGATIONS

Agency/Supervisor Issue

Respondent denied the supervisory allegations of the complaint. The parties stipulated that Jimmy Green, plant manager, is a supervisor. Green testified that Mike McGown, Brian Keyes, James Nobert, Jesse Terrazzas, Cesar Esquivel, Stephen Lindholm, and Grady Kelly are supervisors. The record shows that those individuals alleged to be supervisors/agents were supervisors or agents at material times with the exception of Arnie Ramos, Deaun Carpenter, the security guards, and those employees alleged as junior foremen and leadmen. Respondent contest the General Counsel's allegations that those employees were supervisors or agents at material times.

Anthony Bertrand testified that Respondent's supervisors are generally salaried with authority to discipline. None of the lead men or junior foremen have input into hiring, nor do they have authority to grant raises and give promotions.

A somewhat unusual situation impacted on the supervisory issue. Most of the supervisors material to these proceedings spoke only English while most of the employees spoke only Spanish. Some of the employees whose supervisory authority is in question were able to speak both Spanish and English. Under that situation any extensive communications between management and Spanish speaking employees relied on those that spoke Spanish on behalf of management.

Mike Wichter

The General Counsel alleged and Respondent disputes, that Junior Foremen Mike Wichter was a supervisor and/or agent.

Jorge Lopez testified that he worked on the third shift in the reprocessing department. His supervisor's assistant was Mike Wichter. Wichter wore white shirts similar to the supervisors. Wichter gave the employees their work orders and he arranged meetings for the employees. Lopez admitted that he received disciplinary action while with Respondent but that Wichter never signed any of those reprimands.

Hector Vizcarra was a grinder lead for Respondent in November 1996. His junior foreman was Mike Wichter. The junior foreman had authority to run the computers and check out production. In the mornings, Wichter made a list of assignments for each employee to a particular machine. He directed the employees in selection of materials and he could move employees from one job to another. Wichter could call the employees to meetings. Wichter unlike the supervisors, spoke Spanish and had more contact with Vizcarra. Vizcarra testified that Wichter never gave him a written warning, a raise in pay, or a promotion.

Jose Luis Aguilar testified that Mike Wichter brought the employees their daily schedule; he oversaw each employees' assignment to a specific machine and he made sure that production standards were met. Wichter could speak Spanish and English. The employees usually went to Wichter when they had a problem. Aguilar testified that he was not hired by Wichter; that Wichter did not give him a raise or a promotion and that Wichter reported to someone unknown by Aguilar. He agreed that when Mike Wichter threatened that the employees would lose overtime, he had the impression that Wichter meant that he too would lose overtime.

Michael Wichter testified that he has been a junior foreman in reprocessing for 1-1/2 years. He does not consider himself a member of management; and he does not have his own office. He is hourly paid and is paid overtime for time over 40 hours each week. He reports to Grady Kelly. He cannot hire, terminate, suspend, layoff, promote, grant pay increases or decreases, grant bonuses, or discipline employees. Wichter estimated that he spends 50 to 75 percent of his daily time performing manual labor.

Findings—Credibility

The evidence is not in dispute regarding the job duties of Mike Wichter.

Conclusions

The undisputed evidence showed that Mike Wichter, a junior foreman, wore a uniform similar to admitted supervisors. Both Wichter and the supervisors wore white shirts. Wichter gave work orders to the employees, made daily assignments to the employees, directed employees in selecting materials, moved employees between jobs, oversaw production requirements, and arranged employee meetings. Wichter, unlike the supervisors, spoke Spanish as well as English. The record shows that a substantial number of the employees in Wichter's department spoke only Spanish. Wichter was the only authoritative figure that spoke directly to the employees. Employees usually went to Wichter when they had problems.

Wichter could not discipline, hire, discharge, promote, or grant wage increases to employees. He is hourly paid and spends 50 to 75 percent of his time performing manual labor.

However, when an employer places an employee "in a position in which the employees in his department look to him as an authoritative communicator of information on behalf of management regarding safety, housekeeping, quality control, and production matters, it is clear that the employees would tend to reasonably view the leadman as an agent of the employer on other employment related matters discussed in a similar context. *Southern Bag Corp.,* 315 NLRB 725 (1994). The evidence illustrated that most of the employees in Wichter's department spoke only Spanish. Wichter wore the same uniform, a white shirt, as recognized supervisors and he was the Spanish-speaking employees only contact with management. *Great American Products*, 312 NLRB 962, 963 (1993). Respondent placed Mike Wichter in a position in which he was "the usual conduit for communicating management's views and directives to employees, from the time of their hiring through their daily accomplishment of their tasks." *Victor's Cafe 52,* 321 NLRB 504 fn. 1 (1996).

The full record and especially the evidence about November 14 show that the employees especially the Spanish-speaking employees, had little if any contact with admitted supervisors. When those employees had questions about their working conditions they went to their respective foreman, junior foreman, or leadman. It was to those people that the employees had their only substantial contact with management.

In view of the full record, I find that the credited record proved that Mike Wichter was an agent of Respondent as to the matters alleged in the complaint.

Lupe Rivera, Andy Farmer, and Lee Marsh

The General Counsel alleged that Leadmen Farmer, Rivera, and Marsh were supervisors or agents at material times.

Jason Snow testified that the leadmen assigned jobs and projects and would oversee the work. They would relay messages to the employees from upper management. The leadmen held weekly meetings when they would go over what had occurred during the week explaining what had been done wrong or right. James Qualls, the supervisor, did not attend those meetings.

Snow testified that he received feedback from the leadmen and Qualls regarding his work during his probationary period. Leadmen wore uniforms similar to those worn by rank-in-file employees. The probationary employees wore different color shirts. Probationary employee shirts and pants were green. Leadmen and nonprobationary employees wore blue and foremen wore white shirts.

Luis Villa testified that his supervisor was James Qualls and Qualls' immediate boss was Jim Clay. Three leadmen worked for Qualls, Lupe Rivera, Andy Farmer, and Lee Marsh. The leadmen directed work and scheduled weekly employee work meetings. Villa had little contact with James Qualls. Leadmen relayed messages from Qualls to the employees. They trained new employees. At one time, James Qualls told Villa there was a chain of command. Matters had to first go through the leadman before coming to Qualls.

James Qualls testified that he is the supervisor over the machine shop and the dye maintenance area. There are about 12 employees in the dye shop with Leadmen Andy Farmer, Trinidad (Lupe) Rivera, and Lee Marsh. The leadmen are hourly paid and wear the same colored shirts as the other employees. The leadmen do not have authority to discipline, discharge, grant pay raises, or promotions. The leadmen report to Qualls.

James Qualls testified that he consulted with the leadmen as to their opinion of Jason Snow's work during Snow's probationary period.

Trinidad Rivera testified that he is a leadman in the dye department. He is hourly paid and receives overtime pay for work over 40 hours a week. He estimated that he spends 75 percent of his worktime performing mechanic's duties. The parties stipulated that Lee Marsh would testify similar to Trinidad Rivera. Andy Farmer testified that he, like Trinidad Rivera, is a leadman. He wears a blue shirt at work.

Findings—Credibility

The evidence is not in dispute regarding the job duties of Rivera, Marsh, and Farmer.

Conclusions

Respondent argued that Rivera, Marsh, and Farmer are leadmen. Their job duties include assigning jobs, overseeing work, holding weekly meetings, relaying messages from management, and training new employees. The leadmen were the first step in the chain of command. They were hourly paid and spent 75 percent of their time performing mechanics duties.

The leadmen wore uniforms similar to rank in file employees. They wore blue shirts. They lacked authority to discipline, discharge, grant pay raises, or promotions.

The General Counsel argued that where an employer has placed the three leadmen in positions in which the employees look to them as authoritative communicators of information on behalf of management regarding safety, housekeeping, quality control, and production matters, it is clear that the employees would reasonably view the leadman as an agent of management on other employment related matters discussed in a similar context. Employees were told by supervision to go through the leadmen before coming to the supervisor. *Southern Bag Corp*., supra.

The full record showed that the three leadmen were the "authoritative communicators of information on behalf of management" and that management looked to them regarding labor relations with the employees. As shown above Supervisor James Qualls testified that he consulted with the leadmen as to their opinion of Jason Snow's work during Snow's probationary period. Qualls testified that he relied on the leadmen's reports in deciding to terminate Snow.

As shown above, the full record and especially the evidence about November 14 show that the employees especially the

Spanish-speaking employees, had little if any contact with admitted supervisors. When those employees had questions about their working conditions they went to their respective foreman, junior foreman, or leadman. It was to those people that the employees had their only substantial contact with management.

In view of the full record, I am convinced that Leadmen Farmer, Rivera, and Marsh were Respondent's agents at material times. Farmer, Rivera, and Marsh did not wear a white shirt similar to Mike Wichter and admitted supervisors. However, the three were shown to be the predominant communications vehicle between the employees and management. *Southern Bag Corp.,* supra; *Great American Products*, 312 NLRB 962, 963 (1993); *Victor's Cafe 52,* 321 NLRB 504 fn. 1 (1996).

Deaun Carpenter

Pedro Puerto's supervisor was Walter Krietsinger in the fab shop. Deaun Carpenter was his foreman. Carpenter assigned work to the employees. He gave prints to the employees and conducted some of the employee safety meetings. He also explained memos from personnel to the employees. Carpenter ordered parts, materials, and supplies. He trained Puerto as well as other employees.

Puerto's supervisor, Walter Krietsinger, told Puerto that Carpenter would assign his duties and oversee his work each day and that Carpenter would keep the records including work orders and timesheets.

Pedro Puerto testified that Foreman Deaun Carpenter wore a blue shirt similar to the one worn by Puerto. He admitted that he was not hired by Carpenter. Carpenter neither hires nor fires employee. Puerto testified that Carpenter did suspend one employees that was a disciplinary problem. Carpenter told the employee that he was suspended for 3 days. Carpenter then took the employee to Supervisor Walter Krietsinger's office and then to Bill Davis' office.

Carpenter does not promote employees nor does he approve pay increases. After talking to Carpenter about a pay increase it was necessary for Puerto to take the matter to Krietsinger.

Deaun Carpenter testified that he is one of three employees in the fab shop. Carpenter testified that he is foreman and there is a welder and a material handler. Carpenter wears a blue shirt as do the rank-in-file employees. Carpenter is hourly paid, receives overtime pay, and reports to Supervisor Walter Krietsinger. Carpenter spends 90 percent of his time welding. He cannot hire, fire, suspend, layoff, approve pay changes, discipline, or transfer employees.

Findings—Credibility

The evidence is not in dispute regarding the job duties of Deaun Carpenter.

Conclusions

The evidence showed that Carpenter was a foreman. He assigned work, held employees' safety meetings, ordered parts and materials, trained employees, explained communications from personnel, would oversee work, maintained work orders, and timesheets. Carpenter wore a blue shirt like the rank-in-file employees. He did not have authority to promote, approve pay increases, hire, fire, suspend, layoff, discipline, or transfer employees. He is hourly paid. The ratio of foreman to employees in Carpenter's situation was 1 to 3.

However, Carpenter, unlike Farmer, Rivera, and Marsh, did discipline an employee and he was a foreman rather than a leadman.

As shown above, the full record and especially the evidence about November 14 show that the employees had little if any contact with admitted supervisors. When those employees had questions about their working conditions they went to their respective foreman, junior foreman, or leadman. It was to those people that the employees had their only substantial contact with management.

I am convinced in view of the full record that employees considered foreman to be supervisors. In view of that record I am convinced that Carpenter was a supervisor or agent at relevant times. *Southern Bag Corp*., supra, 315 NLRB at 725; *Victor's Cafe 52,* supra, 312 NLRB at 504; *Great American Products*, supra.

Arnie Ramos

As shown here, Arnie Ramos acted as translator between Respondent's supervisors and the striking employees on the morning of the work stoppage. Ramos' regular job was that of a trainer of new employees.

Findings—Credibility

The evidence is not in dispute regarding Arnie Ramos.

Conclusions

The General Counsel argued that Ramos, as translator between management and striking employees, was shown to be a spokesman for management. The General Counsel argued that Ramos' duties as a trainer of new employees including reviewing company rules with those employees, providing safety education, teaching them to work in their departments, answering questions regarding company rules and policies and acting as a conduit in communicating management's views to employees shows that Ramos was Respondent's agent.

The record shows that Ramos was acting as Respondent's agent at times when he was acting as translator for management employees. *Victor's Cafe 52,* 321 NLRB 504 (1996); *Great American Products*, 312 NLRB 962, 963 (1993).

The Security Guards

The record showed that Respondent's security guards videotaped employees engaged in union activities; directed employees engaged in union activities to leave the premises; blocked striking employees from entering the premises; and were involved in removing union literature from an employee's possession.

Findings—Credibility

The evidence is not in dispute regarding duties of the security guards.

Conclusions

I find that the record showing that relevant actions by security guards including blocking the strikers return to work, directing employees engaged in union activities to leave Respondent's property and videotaping union activities of employees, proved that those guards were acting as agents of Respondent. The record shows that the guards were acting under specific direction of Respondent's management officials when they blocked the striking employees from returning to the plant and when they videotaped employees' union activities. *Sands Hotel & Casino, San Juan,* 306 NLRB 172 (1992).

IV. THE 8(A)(1) ALLEGATIONS

No-solicitation/no-distribution rule

Respondent's employee handbook includes the following provision:

SOLICITATION AND DISTRIBUTION OF LITERATURE

In the interest of maintaining a proper business environment and preventing interference with work and inconvenience to others, employees may not sell merchandise, distribute literature or printed material of any kind, solicit financial contributions, or solicit for any other cause during working time or on the Company property.

Nonemployees are likewise prohibited from distributing material or soliciting employees on Poly-America, Inc. premises at any time.

Jesse Terrazas—November 14, 1996

Jesse Terrazas was identified as a supervisor by himself and by Plant Manager Jimmy Green.

Jose Guerrero testified that he and his coworkers were in the breakroom reading prounion fliers on November 13, 1996, when Terrazas entered. Terrazas said that he did not want any problem with the fliers. He collected all the fliers from the tables, crunched them, and threw them in the trash.

Mike Wichter testified that he remembered vaguely cleaning up the breakroom in November 1996. He recalled, "[T]there was a lot of trash cans, cups, bags, and stuff on the tables along with a bunch of pamphlets." He testified that he did not pay attention to them. He and Jesse Terrazas would just go through and clean up and throw stuff away. Wichter was asked if he said anything about union literature while cleaning the breakroom. He testified that he said, "[T]hey should read it on their break time or a time when we're not getting paid; not on paid company time."

Jesse Terrazas denied telling anyone they cannot read union literature in the break area. Terrazas denied taking any union literature away from any employee except on one occasion. When asked if he had ever taken anybody's union literature, Terrazas admitted picking up a couple of pieces of "those papers from different tables, but I pick up everything in general, trash."

Findings—Credibility

In view of the full record I am convinced that Jose Guerrero testified truthfully. Both Mike Wichter and Jesse Terrazas admitted that Terrazas picked up and discarded union fliers in the breakroom. I was impressed with Guerrero's demeanor and I credit his testimony.

Conclusions

I find that Jesse Terrazas was a supervisor at material times. On November 13, 1996, the union organizing campaign was not covert. The record illustrated that Respondent took a strong position in opposition to the Union. There was no showing that Respondent had a valid nondiscriminatory purpose in discarding union materials. Terrazas did not tell the employees why he needed to discard the union materials.

The credited testimony of Guerrero proved that supervisor Jesse Terrazas discarded union fliers and threatened employees with unspecified reprisals by telling them that he did not want any trouble with the union fliers. *Action Auto Stores,* 298 NLRB 875, 897 (1990); *Automotive Plastic Technologies,* 313 NLRB 462, 463 (1993); *Vemco, Inc.,* 304 NLRB 911, 927 (1991); *CVN Companies,* 301 NLRB 789, 890 (1991).

Michael Wichter—November 10, 1996

As shown here, Jose Luis Aguilar testified that a few days before November 14, 1996, Mike Wichter talked to the employees. Wichter held a union flier in his hand and said that the supervisors did not want to see any fliers. Among other things Wichter said that the Union wasn't any good for the employees. Wichter tore up the union flier and threw it in the trash.

Michael Wichter denied telling anyone in the crew they were not allowed to read union literature in the breakroom. He denied telling anyone they could not discuss the Union at work. He testified that the question was brought up to him and he replied that it would be "much better idea if they waited off of Company time, like on their breaks or when they're maybe away from the company or they're just not on company time because we were working."

As shown above, Wichter testified that he remembered vaguely cleaning up the breakroom in November 1996. He and Jesse Terrazas would just go through and clean up and throw stuff away. Wichter testified that he said to employees "they should read it on their break time or a time when we're not getting paid; not on paid company time." Wichter testified that some of his shift employees were in the breakroom when they shouldn't be reading through stuff.

Findings—Credibility

Jose Luis Aguilar demonstrated good demeanor. As shown here, I credit his testimony and do not credit the conflicting testimony of Mike Wichter.

Conclusions

The credited evidence proved that Respondent, by its supervisor and agent, Mike Wichter, prohibited employees from distributing union literature on company premises during nonworktime in nonwork areas (*Ford Motor Co.*, 315 NLRB 609 (1994); *Automotive Plastic Technologies, Inc.,* supra.) and discarded union materials previously distributed by employees in the breakroom *Vemco, Inc*., supra,, in violation of Section 8(a)(1) of the Act.

Andy Farmer—November 12, 1996

Around 5 minutes after he allegedly interrogated Luis Villa on November 12, 1996 (see below), Andy Farmer returned to Villa with an employee handbook. Farmer asked Villa to read the handbook. As shown above, Farmer had highlighted the provision dealing with solicitation and distribution of literature.

After Villa read the provision of the handbook, Farmer told Villa that Villa was breaking company policy. Farmer asked Villa where he was doing it again and Villa replied on company property. Villa told Farmer that he was doing it during his lunchtime, before and after work. Farmer asked Villa who signed his checks. Villa replied, "Mr. Ross."

After lunch that same day, Farmer asked Villa to ride with him on a golf cart. Farmer told Villa that he had talked with Clay and Clay had said that he was not going to stop Villa from getting the Union with people as long as Villa did it on his own time. Farmer said that he could do it before and after work and during lunch but not during breaktime, which was company time. Farmer told Villa that Farmer's dad had worked in a union facility and that Farmer did not want anything bad to happen to Villa. Farmer told Villa that if he did not like it in the Company now he would not like it when the Union came in. He said that if the Union came in the contract will stipulate that everybody's duties will be and that if there was a shutdown

there would be layoffs. Farmer said that he would just hate to see Villa outside the gate wishing he had a job.

On November 14, there was an employee meeting attended by all three leadmen, Farmer, Rivera, and Marsh. Andy Farmer started the meeting saying that he was just relaying a message from Clay. Farmer said that it was prohibited to talk about the Union while working. That the topic is too hot right now. Farmer said that an employee caught talking about the Union the first time would get a verbal warning; the second time a written warning, and the third time the employee would be taken upstairs to the big man who would decide the punishment.

Villa recalled that Glenn Henderson said that was freedom of speech. Leadman Lupe Rivera told Andy Farmer that the employer cannot prohibit the employees from talking about the Union. Jason Snow said that questions had been allowed in other meetings unlike here where no questions were permitted. Farmer told the employees they could talk about anything else except the "U" word. He told the employees they were replaceable, this job was not given by God.

Trinidad Rivera recalled a meeting involving employees and the other two leadmen, Marsh and Farmer, when the subject of the Union came up. He recalled that Andy Farmer said something about which discussions were appropriate in the work place regarding unions. He recalled that Glenn Henderson responded that was freedom of speech and Rivera told Farmer that Henderson was right.

The parties stipulated that Lee Marsh would testify similar to Trinidad Rivera.

Farmer recalled the meeting in November 1996. According to Farmer he told the employees not to group up and talk about the Union. He was told that he could not tell the employees what they could not talk about and he reneged on his statement. Farmer testified that he apologized and told the employees that he could not tell them not to talk. He did say that they should not group up.

Findings—Credibility

I was impressed with the demeanor of Luis Villa and Leadman Trinidad Rivera. Rivera appeared to testify without regard to whether Respondent would be helped or hurt by his testimony. I credit Villa's testimony and to the extent there is no conflict I also credit Rivera. I do not credit Rivera to the extent his testimony conflicts with that of Villa.

I was not impressed with the demeanor of Andy Farmer. Farmer was in position of defending himself against complaint allegations and he appeared to be influenced by that position. I do not credit Farmer's testimony to the extent it conflicts with credited evidence.

Conclusions

Andy Farmer gave Luis Villa a copy of Respondent's employee handbook. The provisions dealing with solicitation and distribution of literature were highlighted. As shown above those provisions prohibited solicitation or distribution of literature "during working time or on the Company property." The Board has consistently found that broad prohibition violative of Section 8(a)(1) of the Act.

Respondent's agent, Andy Farmer, prohibited employees from distributing union literature on company premises during nonworktime in nonwork areas *Ford Motor Co.*, supra; *Automotive Plastic Technologies,* supra.

As to the meeting and Farmer's comments that the employees could not talk about the Union, the testimony shows that comment was clarified by the comments of Lupe Rivera. Rivera who held the same job as Farmer, told the employees that Respondent could not prohibit their talking about the Union. In view of my credibility determinations I do not credit Farmer's testimony that he apologized to the employees and reneged on his statement that they could not discuss the Union. I find that Farmer's comments resulted reasonable tended to cause the employees to restrain from engaging in union solicitation and as such, constitutes a violation of Section 8(a)(1) of the Act.

Security Guards—November 14, 1996

As shown below, Britt Samson testified that he and Brian Robinson passed out union fliers at the plant before work. A security guard approached and asked Samson for his name and badge number and to leave the property. Samson told the guard they would not leave. A few minutes later, the guard returned and asked if Samson would surrender his union materials including cards and leaflets. Samson refused. He noticed two other security guards in the distance and one appeared to be filming Samson with a video camera. He noticed the guard continued to film while he passed union materials to an employee.

Findings—Credibility

There was no dispute as to the credibility of this matter.

Conclusions

The record shows that the security guards were acting at the direction of Respondent's management or that their actions in confronting Samson and Robinson, were condoned and pursued by management. As shown here, both Samson and Robinson were suspended from work because of their refusal to leave the premises. The actions by Respondent's agent and security guard resulted in the enforcement of an illegally broad no-solicitation/no-distribution rule in violation of Section 8(a)(1) of the Act.

V. ADDITIONAL 8(A)(1) ALLEGATIONS

Michael Wichter

As shown above, I find that Michael Wichter was Respondent's agent during material times.

On November 10, 1996, Hector Vizcarra and a number of coworkers including Jorge Lopez, were present in the breakroom when Mike Wichter talked about the Union. Wichter said that the Union had threatened the plant; had threatened to burn the plant; that the Union was not good for anything; they were going to lower the employees' extra hours, their overtime; the Union was going to lower their wages; the employees were going to be paid $300 a week in quotas; and that security was not good.

Jose Luis Aguilar testified that a few days before November 14, 1996, Mike Wichter talked to the employees. Wichter held a union flier in his hand and said that the supervisors did not want to see any fliers. Wichter said that the Union wasn't any good for the employees; that they were going to cut down the employees' overtime; that the Union would charge a weekly or monthly quota that could be up to $300. Wichter tore up the union flier and threw it in the trash.

Hector Vizcarra and Jose Luis Aguilar testified about November 14, 1996. When Vizcarra arrived for work that day

some of his coworkers were complaining to Junior Foreman Mike Wichter. Both Vizcarra and Aguilar testified that Wichter said that the owner, Steve Ross, was going to pay us but now that we were with the Union he had decided not to pay. Wichter told the employees that since he was the one that gave them their checks he could go into the office and make the employees' claims but that wasn't his job. He told the employees that if the employees did not like it they could just punch out and go take their claims to the office. Aguilar asked Wichter what he should do as the other employees left to go to the office and complain. Wichter told him to go back and punch out his timecard and return to his house because he was not going back to work then.

Michael Wichter denied telling anyone in the crew they were not allowed to read union literature in the breakroom. He denied telling anyone they could not discuss the Union at work. He testified that the question was brought up to him and he replied that it would be "much better idea if they waited off of Company time, like on their breaks or when they're maybe away from the company or they're just not on company time because we were working."

Wichter denied that he told anyone that the Union had threatened to burn down the plant. He denied saying that Union would charge $300 a month in dues. Wichter admitted saying that the father of a friend from high school worked for a union and Wichter told employees what he "paid in dues and other things." He denied saying the Union would prevent the employees from working overtime or they would get only minimum wage if they elected the Union. Wichter denied telling an employee that the Union would not cover medical benefits for family members. Wichter admitted telling employees to check out what the Union had to offer and saying that it was going to be hard to beat the current company benefits.

Wichter testified that he remembered vaguely cleaning up the breakroom in November 1996. He recalled, "[T]here was a lot of trash cans, cups, bags and stuff on the tables along with a bunch of pamphlets." He testified that he did not pay attention to them. He and Jesse Terrazas would just go through and clean up and throw stuff away. Wichter was asked if he said anything about union literature while cleaning the breakroom. He testified that he said, "[T]hey should read it on their break time or a time when we're not getting paid; not on paid company time." Wichter testified that some of his shift employees were in the breakroom when they shouldn't be reading through stuff.

Michael Wichter testified about November 14, 1996. Several employees confronted him about why they didn't receive enough pay. Wichter told the employees there was nothing they could do and they should wait until morning and talk to personnel. About 10 to 15 minutes into the shift, Wichter told the employees "if you're not going to work, you need to go ahead and punch out and call in for your attendance point or whatever and deal with it in the morning." The employees punched out.

Findings—Credibility

I was impressed with the demeanor of Hector Vizcarra and Jose Luis Aguilar. I do not credit the testimony of Michael Wichter to the extent his testimony conflicts with credited evidence. I make my credibility determinations in view of the full record and the demeanor of Vizcarra, Aguilar, and Wichter.

Conclusions

The credited evidence proved that Mike Wichter told employees that the Union was no good, that the Union had threatened the plant, had threatened to burn down the plant, and the Union would charge up to $300 constitutes attempts to disparage the Union, *Kawasaki Motors Corp.*, 257 NLRB 502, 510–511 (1981); *Interstate Truck Parts,* 312 NLRB 661 (1993); and that the Union would cause Respondent to lower wages; hours, and overtime and job security would suffer constitutes threats with loss of benefits, *Plastonics*, 233 NLRB 155, 156 (1977); *Hamilton Plastic Products,* 309 NLRB 678, 683 (1992), all in violation of Section 8(a)(1) of the Act.

Wichter told the employees that Respondent's owner was going to pay them for November 6 but now that they were with the Union he had decided not to pay. Those comments constitute additional violations of Section 8(a)(1). *Marshall Durbin Poultry Co.*, 310 NLRB 68, 69 (1993). The General Counsel admitted that violation was not alleged in the complaint. However, I find that the matter was fully litigated. Mike Wichter testified and his testimony included his version of what was said when he and the employees discussed their complaint on November 14. *International Carolina Corp*., 319 NLRB 171 (1995); *Carillon House Nursing Home*, 268 NLRB 589 (1984).

Andy Farmer, Trinidad Rivera, and Lee Marsh

On November 12, 1996, Leadman Andy Farmer talked with Luis Villa and employee Glenn Henderson. Farmer asked the two employees who it was from their crew that was handing out union cards. Villa replied that it was he that was handing out union cards. Farmer shook his head and said that it could not be Villa and asked if Villa knew what he was doing. Farmer asked Villa if he knew what could happen to him and that he would not make a big issue of it but it was making all of us look bad.

Jason Snow testified that he was questioned about union activity by his leadmen, Trinidad Rivera, Lee Marsh, and Andy Farmer. They asked him frequently about what percentage of the employees had signed up for the Union and if Snow felt the Union was going to get in.

Andy Farmer denied that he interrogated employees about the Union. He admitted telling employees about his father's experiences while he worked for Stroh's brewery in a union. He denied saying that any employee would be punished or fired for supporting the Union. Farmer denied saying that employees that supported the Union could not work for the Company any more but would have to work for the Union. He denied that he ever threatened or interrogated Luis Villa about the Union.

Trinidad Rivera denied telling any employees they could not read union literature in the break area; or that they were not allowed to discuss the Union during work. Rivera denied that he ever interrogated any employee about the Union. The parties stipulated that Lee Marsh would testify similarly to Trinidad Rivera.

Findings—Credibility

Luis Villa demonstrated good demeanor. I credit the testimony of Villa. I was impressed by the testimony of Jason Snow. As shown here his testimony was substantially corroborated by the testimony of others. I credit Villa and Snow.

I was also impressed with the demeanor of Leadman Trinidad Rivera except when he was testifying in defense of his own conduct. Rivera appeared to testify without regard to whether Respondent would be helped or hurt by his testimony. I credit his testimony except to the extent it conflicts with credited evidence.

I was not impressed with the demeanor of Andy Farmer. Farmer was in position of defending himself against complaint

allegations and he appeared to be influenced by that position. I do not credit Farmer's testimony to the extent it conflicts with credited evidence.

Conclusions

I find that Farmer, Rivera, and Marsh unlawfully interrogated employees about employees' union activities in November 1996. At the time of those conversations the union organizing campaign was not covert and it was not shown that the questioned employees were all known union advocates. The record illustrated that Respondent took a strong position in opposition to the Union. The information sought by Farmer, Rivera, and Marsh included questioning as to which employees were passing out union authorization cards; whether employees knew what could happen to them for passing out union cards; what percentage of the employees had signed union cards and if employees felt the Union would get in. The record failed to show whether all the employees were truthful in responding to the interrogation. Luis Villa did admit that he was distributing union cards. There was no showing that Respondent had a valid purpose in seeking to determine the extent of its employees union activity. Farmer, Rivera, and Marsh did not tell the employees why they needed the requested information and they did not assure the employees against reprisals. The above convinces me that the questioning by Farmer, Rivera, and Marsh was coercive. There was no evidence offered regarding the history of Respondent's attitude towards its employees. *Cooper Tire & Rubber Co. v. NLRB*, 957 F.2d 1245, 1255–1256 (5th Cir. 1992); *Baptist Medical Systems*, 288 NLRB 1160 (1988); *Southwire Co.,* 282 NLRB 916 (1982); *Rossmore House*, 269 NLRB 1176 (1984); and *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

I find that Respondent, through actions of Andy Farmer, Trinidad Rivera, and Lee Marsh, interrogated employees about their union activities in violation of Section 8(a)(1).

Jesse Terrazas

Jesse Terrazas was identified as a supervisor by himself and by Plant Manager Green. In view of that testimony and the full record I find that Terrazas was a supervisor at material times.

As shown here, Jose Guerrero testified that he and his coworkers were in the breakroom reading prounion fliers on November 13, 1996, when Terrazas entered. Terrazas said that he did not want any problem with the fliers. He collected all the fliers from the tables, crunched them, and threw them in the trash.

Guerrero testified that Jesse Terrazas held a meeting with the employees about 3 days after November 13, 1996. There were about 20 or 22 employees according to Guerrero. Terrasas said, "[T]hat those of us who signed on with the union were going to work with the union and those who did not sign on with the union were going to work with the company." Terrazas said that "if we wanted what happened to shift number four to happen to us, then if we signed, then the union is going to force us to go outside with boards, signs." Guerrero asked Terrazas if those on the fourth shift were going to get their jobs back. Terrazas replied, "[T]hat they weren't going to get their jobs back, and that if we signed with the union, the same thing was going to happen to us; we were going to be replaced."

Jesse Terrazas denied telling anyone they cannot read union literature in the break area. Terrazas denied saying anything to discourage employees from supporting the Union. He denied threatening any employees with punishment for supporting the Union and he denied taking any union literature away from any employee except on one occasion. When asked if he had ever taken anybody's union literature, Terrazas admitted picking up a couple of pieces of "those papers from different tables, but I pick up everything in general, trash." Terrazas denied telling the employees in the breakroom they would be fired for supporting the Union; that they would have to work for the Union and not for the Company; saying that something bad would happen to someone that signed a union card; telling any employee they would have to strike if they voted Union or in order to get the Company to recognize the Union; saying that employees would be paid $15 a day if they became a member of the Union or that other employees had been fired for supporting the Union.

Jose Herman Hernandez and Hermilio Balderas were employees that worked under Terrazas' supervision. In regard to the union campaign around November 1996, Hernandez and Balderas denied hearing Terrazas say that employees would not be allowed to discuss the Union; they denied hearing Terrazas make threats about employees that were active in the Union; seeing Terrazas throw away union pamphlets; hearing Terrazas say he didn't want to see union literature in the breakroom or threaten to fire anyone if they signed a union card. Hernandez attended weekly meetings held by Terrazas. He denied hearing Terrazas say that other employees had been fired for supporting the Union. On cross-examination Balderas denied that he had seen union literature in the breakroom.

Findings—Credibility

As shown here, I credit the testimony of Jose Guerrero. I am convinced that Jose Guerrero testified truthfully. Both Mike Wichter and Jesse Terrazas admitted that Terrazas picked up and discarded union fliers in the breakroom. I was impressed with Guerrero's demeanor.

I do not credit the denials of Jesse Terrazas and I do not credit the testimony of Jose Herman Hernandez and Hermilio Balderas to the extent their testimony conflicts with that of Jose Guerrero. There was no showing that Hernandez and Balderas were ever in position to overhear the matters recalled by Guerrero and their testimony conflicted with admissions from both Terrazas and Wichter. I was not impressed with the demeanor of Hernandez or Baleras.

Conclusions

The credited testimony of Jose Guerrero proved Terrazas threatened the employees with isolation and discharge by telling them those that signed with the Union were going to work for the Union and those that did not sign were going to work for the Company and that the same thing that happened to the fourth shift who would not get their jobs back, would happen to those that signed with the Union. *Guardian Industries Corp*., 313 NLRB 1275, 1277 (1994). His threat that the Union would force those that signed with it to go outside with boards, implies that a strike is inevitable in violation of Section 8(a)(1). *Classic Coach*, 319 NLRB 701, 702–706 (1995).

The Security Guards

Pedro Puerto noticed a security guard remove a union flier from an employee's car as Puerto was waiting to pass through security. The guard and employee appeared to be arguing.

Bruce Clark is a machine operator in the extrusion department. He checks quality control. His immediate supervisor is Kevin Wilson. Clark recalled seeing security guards out front

of Respondent's plant on two occasions during mid-November 1996 appearing to videotape union employees handing out union fliers. One of Respondent's employees was holding up a sign while the union people were passing out the union fliers.

As shown below, Britt Samson testified that he and Brian Robinson passed out union fliers at the plant before work. A security guard approached and asked Samson for his name and badge number and to leave the property. Samson told the guard they would not leave. A few minutes later the guard returned and asked if Samson would surrender his union materials including cards and leaflets. Samson refused. He noticed two other security guards in the distance and one appeared to be filming Samson with a video camera. He noticed the guard continued to film while he passed union materials to an employee.

Charles Kramer is the management information service (MIS) manager. Glenn Stallsmith is the guards leadperson. The security guards report to Kramer. He admitted that at some point after the union campaign started in November 1996, the security guards started videotaping traffic congestion and that sort of thing. Kramer testified they were concerned there might be an accident because the union organizers were causing congestion at the entranceway in a couple of places and they were concerned about the organizers being on "the property."

James Hicks is a security guard. He denied that he did any videotaping during November 1996. He did see union organizers passing out materials to employees and that created traffic congestion. There was an auto accident at the east entrance during that time. Hicks denied that he or another security guard forcibly took a leaflet from an employee.

Hicks was present when the employees came back onto the company property on November 14. He does not speak Spanish and did not talk to the employees. He testified that only one security guard spoke to the employees and that was Jorge Gonzalez.

Deborah Bowser, another security guard, testified that union organizers passing out materials during November 1996 created traffic congestion. She denied that she ever took union handouts or leaflets from an employee.

Anthony Bertrand is the purchasing manager. He testified that Respondent opened a new entry into the plant on the east side during the union campaign because of congestion at the old entry. He first learned of the union organizing campaign when he saw union people handing out leaflets at the plant about a week after the November 6, 1996 Immagration and Naturalization Service (INS) raid. Bertrand learned that a decision was made by Respondent to engage in videotaping because of liability concerns over the traffic congestion. He learned that one videotape was made. He admitted that Britt Samson and Brian Robinson were seen in the parking area on the videotape. Neither Samson nor Robinson was in a congested area.

Findings—Credibility

I was impressed with the demeanor of Charles Kramer, Anthony Bertrand, Pedro Puerto, Bruce Clark, and Britt Samson.

I find that testimony of James Hicks and Deborah Bowser was not probative of whether Respondent's agents engaged in the activities included in the testimony of Puerto, Clark, and Samson. The testimony of Hicks and Bowser failed to establish that either was in a position to rebut the other evidence.

Conclusions

Respondent contends that its security guards were not agents. However, as shown above, the evidence proved that the guards were acting under Respondent's instructions when they videotaped employees engaged in Union activities. I found they were Respondent's agents. *Sands Hotel & Casino, San Juan*, 306 NLRB 172 (1992).

The credited testimony of Bruce Clark and Britt Samson, as well as admissions by Charles Kramer and Anthony Bertrand proved that Respondent security guards videotaped employees engaged in Union activity at the direction of Respondent. That videotaping was conspicuous and constitutes violations of Section 8(a)(1). *Chester County Hospital*, 320 NLRB 604, 618–619 (1995). Even though Respondent contends that it was concerned with traffic congestion, that does not excuse the open filming of employees not involved in traffic congestion but involved in union solicitation.

The credited testimony of Pedro Puerto proved that Respondent's security guard stopped a car and confiscated union literature. I find that constitutes a violation of Section 8(a)(1). *Alson Knitting, Inc*., 301 NLRB 758, 760 (1991); *CVN Companies, Inc*., supra, 301 NLRB at 790.

Arnie Ramos

Jorge Lopez and Hector Vizcarra testified that employees that had walked off their jobs came to the plant at 8 a.m. on November 15. The employees told the security guards that they were ready to go to work and that they had been ready to return to work the night before. Arnie Ramos came out. Ramos told the employees they had been fired. Later others including Jimmy Green came out. Vizcarra testified that the employees told Green that they wanted to return to work but that Green said they had been replaced and if Respondent needed them they would be phoned. Hector Vizcarra said that the employees said on several occasions to Green that they wanted him to give them back their jobs.

Arnie Ramos testified that he is a trainer. On the morning of November 15, 1996, he translated for Anthony Bertrand and a group of employees. He recalled translating to the group of employees that Bertrand said, "[D]ue to their refusal to return to work the night before, a decision had been made to replace them. And if that situation ever changed, the company would contact them individually." One of the employees asked if they had been terminated. Bertrand replied no, they had been replaced. Ramos denied that Bertrand told any of the employees they had been fired.

Findings—Credibility

As shown here, I credit the testimony of Jorge Lopez and Hector Vizcarra in view of the full record and their demeanor. To the extent there are conflicts I do not credit Arnie Ramos or Jimmy Green.

Conclusions

I find on the basis of the credited testimony of Jorge Lopez and Hector Vizcarra that employees were told they had been fired on November 15, after the employees engaged in a strike. By acting as translator of admitted supervisors, Arnie Ramos was shown to be Respondent's agent. His telling the employees they had been fired for union and protected concerted activity constitutes a violation of Section 8(a)(1). *Victor's Cafe' 52,* 321 NLRB 504 (1996); *Great American Products*, 312 NLRB 962, 963 (1993).

Anthony Bertrand

Luis Villa met with Anthony Bertrand on November 14, 1996. Bertrand told Villa that a note had crossed his desk that Villa had requested a meeting with Ross. Villa said that he no longer needed the meeting. While Villa was still in the office Steven Ross, Respondent's owner, came in and said to Bertrand did he ever feel like he was a cat chasing a mouse and then realized the mouse turned and started chasing him. As Ross walked away he said that maybe he needed 6 months vacation and would come back and reopen this Company. Bertrand said that they knew that the Union had their things going but the Company doesn't worry about it now.

Jose Luis Aguilar testified that he met with Anthony Bertrand 2 or 3 days after November 14, 1996. Bertrand asked Aguilar what had happened the day he had been fired and Aguilar explained everything. Bertrand said that he was sorry, but that Ross had given orders the employees were to be replaced but that Aguilar should go ahead and call because if there was an open opportunity he could have his job back.

Anthony Bertrand recalled meeting with Luis Villa. He testified that Steven Ross walked in while he was meeting Villa and as Ross walked in he was into a cat and mouse story. He recalled that Ross made a comment that he needed a 6-month vacation. Bertrand denied that Ross said anything about closing the Company.

Respondent offered reinstatement to all the striking employees. By letters from Anthony Bertrand on various dates after Bertrand met with the strikers beginning on November 18, each employee was offered reinstatement. However, each of those letters included the condition that if the employee did not "respond and/or report to work by a specified time and date, the employee's employment would be terminated and the employee would lose "any reinstatement rights under the National Labor Relations Act." As examination of the letters to the striking employees shows that many of those employees were given until a specific time on the date of the letter, others the following day, two were given 2 days, three, Jose Luis Aguilar, Ubaldo Loya, and Hector Vizcarra, were given 4 days to report, and another, Jesus Hernandez, was given 9 days to report. Jose Hernandez was told that he had to report by 8:30 a.m. on December 26, 1996, even though his letter was dated January 3, 1997. Audencio Lopez received a letter dated January 9, 1997 stating that he had been terminated for failing to report on January 5, 1997. The letter stated that Lopez had agreed to report on January 5 during a January 2, 1997, phone conversation.

Findings—Credibility

As shown above, I credit the testimony of Luis Villa and Jose Luis Aguilar. Their testimony was similar to that of Anthony Bertrand. To the extent there are conflicts I credit the testimony of Villa and Aguilar in view of their demeanor, the demeanor of Anthony Bertrand and the whole record.

Conclusions

The record established that Anthony Bertrand possessed supervisory authority. Bertrand is the production manager. He had the authority and actually exercised the authority to put the alleged striking employees back to work. I find that Bertrand was a supervisor at material times.

I find that Ross' comments to the effect that he may take a 6-month vacation and reopen the plant, was an implied threat to close the plant and constitutes violations of Section 8(a)(1) of the Act.

Bertrand's letters to the striking employees offering reinstatement includes an illegal condition by requiring the employee to report before a specific time. As shown above in many of the cases employees were given an unreasonable time to report. Respondent failed to show a legitimate business justification for that condition. *Sunol Valley Golf Club & Recreation Co*., 310 NLRB 357, 376 (1993). I find that action by Bertrand involved misrepresented to employees of their rights under the Act and constitutes violations of Section 8(a)(1). *Gibson Greeting, Inc*., 310 NLRB 1286 (1993).

Deaun Carpenter

Pedro Puerto talked with Foreman Deaun Carpenter during November 1996. Several employees were in the breakroom when Carpenter asked Puerto if Puerto had one of those cards. Puerto asked if Carpenter was talking about the union cards and Carpenter said yes. Carpenter was interrupted by the telephone and he left.

Deaun Carpenter denied interrogating Pedro Puerto about the Union. He denied telling employees they could not read union literature in the break area.

Findings—Credibility

As shown here, I credit the testimony of Pedro Puerto.

Conclusions

I find that Deaun Carpenter interrogated employee Puerto about employees' union activities in November 1996. At the time of those conversations the union organizing campaign was not covert and it was not shown that Puerto was a known union advocate. The record illustrated that Respondent took a strong position in opposition to the Union. The information sought by Carpenter included questioning as to whether Puerto had a union card. Puerto was apparently truthful in his response. There was no showing that Respondent had a valid purpose in seeking to determine whether Puerto had a union card. Carpenter did not tell Puerto why he needed to know if Puerto had a union card and he did not assure Puerto against reprisals. The above convinces me that the questioning by Carpenter was coercive. There was no evidence offered regarding the history of Respondent's attitude towards its employees. *Cooper Tire & Rubber Co. v. NLRB*, 957 F.2d 1245, 1255–1256 (5th Cir. 1992); *Baptist Medical Systems*, 288 NLRB 1160 (1988); *Southwire Co.,* 282 NLRB 916 (1982); *Rossmore House*, 269 NLRB 1176 (1984); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

As shown above, I am convinced that Carpenter was a supervisor or agent at relevant times. *Southern Bag Corp*., 315 NLRB at 725; *Victor's Cafe 52,* 312 NLRB at 504; *Great American Products*, 312 NLRB at 963.

The credited testimony proved that Carpenter engaged in violation of Section 8(a)(1) by interrogating Puerto. Puerto was not shown to be an open union advocate. *Rossmore House*, supra.

Charles Allgood

Brian Robinson testified that around 2 weeks after the November 14, 1996 work stoppage, Chuck Allgood threw some union literature in the trash in the breakroom. There were materials other that the union leaflets in the breakroom and Allgood did not trash those. Allgood left after seeing Robinson.

Maintenance Manager Chuck Allgood testified that 61 employees report to him. He goes into employee breakrooms each

week to remove suggestions from the suggestion box. He testified that he does not recall picking up union literature and throwing it away.

Findings—Credibility

I was impressed with the demeanor and the testimony of Brian Robinson. Chuck Allgood was not impressive in his testimony that he did not remember throwing away union literature. I credit Robinson's account of that occurrence.

Conclusions

The evidence clearly established that Chuck Allgood was a supervisor at material times. He admitted that as maintenance manager, 61 employees report to him. I find that he was a supervisor.

The credited evidence shows that Chuck Allgood selectively trashed union literature in late November 1996. By that action he unlawfully interfered with the employees' right to distribute union literature. *CVN Companies,* supra, 301 NLRB at 790.

I find that the General Counsel failed to prove 8(a)(1) allegations other than those found herein.

VI. SECTION 8(A)(1) AND (3)

The General Counsel alleged that 19 employees engaged in an unfair labor practice strike and made unconditional offers to return to work; and that Respondent illegally discharged those 19 employees.

There is no dispute but that some of Respondent's employees engaged in a work stoppage on November 14, 1996. A dispute followed events beginning with a raid by the U.S. Immigration and Naturalization Service around November 6. Nor is it disputed but that employees engaged in union activities. Plant Manager Jimmy Green admitted that the Union began organizing Respondent's employees in November 1996.

Respondent's owner, Steven Ross, spoke to the mostly Spanish-speaking employees the night of the raid through an interpreter. Some of the employees understood Ross to say they would be paid for that entire shift even if they elected to leave work. Subsequently when the employees received their paychecks on November 14, some employees became upset when they saw they were not paid for worktime missed on November 6. Because of that dispute several employees stopped working.

Hector Vizcarra and Jose Luis Aguilar testified about the November 14, 1996, work stoppage. When Vizcarra arrived for work that day some of his coworkers were complaining to Junior Foreman Mike Wichter. Both Vizcarra and Aguilar testified that Wichter said that the owner, Steve Ross, was going to pay us but now that we were with the Union he had decided not to pay. Wichter told the employees that since he was the one that gave them their checks he could go into the office and make the employees' claims but that wasn't his job. He told the employees that if the employees did not like it they could just punch out and go take their claims to the office. Vizcarra joined a group of employees that refused to work. Aguilar asked Wichter what he should do as the other employees left to go to the office and complain. Wichter told him to go back and punch out his timecard and return to his house because he was not going back to work then.

Michael Wichter testified about November 14, 1996. Several employees confronted him about why they didn't receive enough pay. Wichter told the employees there was nothing they could do and they should wait until morning and talk to personnel. About 10 to 15 minutes into the shift, Wichter told the employees "[I]f you're not going to work, you need to go ahead and punch out and call in for your attendance point or whatever and deal with it in the morning." The employees punched out.

Plant Manager Jimmy Green learned that approximately 30 employees had walked off the job on November 14. He met the striking employees and spoke through an interpreter. Several showed their paychecks to Green and said that they were short some hours pay. Those employees argued that Respondent had promised to pay employees for the entire November 6 shift even though they went home. Jimmy Green asked the employees to return to work. He told them their dispute would be dealt with the following morning.

Green testified that both he and subsequently Steven Ross, spoke to the employees through interpreters during the work stoppage. Respondent's interpreter, Manuel Lopez, was with Jimmy Green when Green spoke to the employees. Green appealed to the employees to return to work.

A union organizer approached the striking employees as they were speaking with Respondent owner Steven Ross. Jorge Lopez recalled that the union organizer was named Laura. Shortly afterward approximately 19 of the employees left Respondent's property and gathered with the union organizer on an adjacent road easement. Jimmy Green went out to speak to the employees. According to Green, the union organizer told him that the employees were on strike and would not return until three demands were met. The employees demanded to be paid for the full November 6 and 14 shifts and that no one would be punished for walking off the job. Green told the employees that he could not agree to pay them for November 6.

Jorge Lopez testified that the union organizer told Green that the employees wanted to return to work but were afraid of reprisals. Lopez testified that the employees tried to return to work but two security guards, an Anglo and a Hispanic, stopped them at the door. Jorge Lopez told the security guards that they were ready to go back to work. The security guards told the employees they were fired. Lopez identified the Anglo security guard as George Horea. He did not know the other guard. Lopez testified that the security guard gave him a calling card which shows Poly-America, Glenn Stallsmith along with address, phone, and fax numbers. Hector Vizcarra and Jose Luis Aguilar agreed that the striking employees decided to return to work but that the security guards closed the door on them. A Hispanic security guard interpreted an Anglo guard's comments. He said that the employees should leave, that they had been fired and the guards had orders not to let them in. Aguilar recalled that the security guard that spoke in Spanish said that Ross had fired the employees because they were with the Union.

Jorge Gonzalez was a security guard in November 1996. He was on duty during the November 14 work stoppage. There were two other guards with Gonzalez. When the employees approached the security shack from the road easement Gonzalez asked them to stop. Gonzalez testified that when the employees approached the security shack "they were saying that they wanted to come in, and we were told not to let them in." He had received instructions from Jimmy Green not to let the employees into the facility.

According to Gonzalez the strikers did not say they wanted to go back to work. Instead they said that they wanted to go in. They asked Gonzalez in Spanish if they didn't have jobs and Gonzalez replied that he "was told not to let you guys in."

Around 15 minutes later the strikers returned to the security shack and told Gonzalez they wanted to get their lunchboxes and stuff in the plant. Gonzalez told the strikers that he could not let them in but that he would contact Jimmy Green. Gonzalez testified the guards were instructed to escort the strikers in two at a time. However, the strikers ignored that instruction and walked pass the guards into the plant.

James Hicks is a security guard. He was present when the employees came back onto the company property on November 14. He does not speak Spanish and did not talk to the employees. He testified that only one security guard spoke to the employees and that was Jorge Gonzalez.

Vizcarra recalled that a member of personnel came out and gave Jorge Lopez a card. That man told Lopez that so the employees would know who it was that fired them here is his card. The Hispanic security guard interpreted that man's comments to the employees.

Under cross-examination Lopez agreed that the striking group of employees delayed 9 or 10 minutes after Jimmy Green talked to them on the road easement "trying to come to an agreement about what" they were going to do.

Jimmy Green testified that Respondent decided to replace the strikers about a half hour after he last spoke to the striking employees. The first steps included immediately transferring four or five extrusion employees to reprocessing. Some additional employees were transferred to reprocessing on the next day. Green did not recall how many employees were transferred. He admitted that no employees were hired before several current employees were transferred to reprocessing on November 15.

Green, along with Anthony Bertrand and interpreter Arnie Ramos met with the striking employees around 8 to 8:30 a.m. on November 15. The employees were told that a decision had been made to replace them.

Jorge Lopez, Hector Vizcarra, and Jose Luis Aguilar testified that the strikers came to the plant at 8 a.m. on November 15. The employees told the security guards that they were ready to go to work and that they had been ready to return to work the night before. The guards would not allow the employees in the facility. The same security guard that gave Lopez a calling card, told them they had been replaced. Vizcarra recalled that Arnie Ramos came out and told the employees they had been fired. Later others including Jimmy Green came out. Vizcarra testified that the employees told Green that they wanted to return to work but that Green said they had been replaced and if Respondent needed them they would be phoned. Hector Vizcarra said that the employees said on several occasions to Green that they wanted him to give them back their jobs. Aguilar recalled that two employees asked Green why they had been fired. Green replied they had not been fired but replaced.

Arnie Ramos testified that he is a trainer. On the morning of November 15, 1996, he translated for Anthony Bertrand and a group of employees. He recalled translating to the group of employees that Bertrand said, "[D]ue to their refusal to return to work the night before, a decision had been made to replace them. And if that situation ever changed, the company would contact them individually." One of the employees asked if they had been terminated. Bertrand replied, "[N]o, they had been replaced." Ramos denied that Bertrand told any of the employees they had been fired.

On the night of November 14 Respondent decided to replace the striking employees after the employees refused to return to work. Anthony Bertrand addressed the striking employees the following morning around 8 a.m. He told them that Respondent had made the decision to replace them. Some of the strikers asked about unemployment. Some asked if they had been fired. Bertrand replied they had not been fired and they were welcome to come and meet with him if they would like to discuss their status. None of the strikers said they wanted to go back to work. The strikers were not scheduled to return to work until that afternoon. Approximately 15 or 16 of the strikers did meet with Bertrand starting on November 18.

Bertrand testified that almost every one of the strikers that met with him beginning on November 18, stated they wanted their job back. Bertrand told each of them they would be notified whenever an opening became available. All the strikers were eventually offered reemployment. Bertrand testified that he did not receive anything from the Union stating that the employees wanted to return to work.

Anthony Bertrand told Jimmy Green that he had made arrangements to meet with some of the strikers individually. Jimmy Green testified that Anthony Bertrand told him on the phone, that several of the employees told him during those individual meetings basically they were ready to come to work. Green testified that he did not believe that Bertrand held any of those individual meetings before Monday, November 18.

Jorge Lopez testified that he met with Tony Bertrand on November 18. He testified that was the first occasion that he talked with Bertrand about wanting to return to work. Lopez testified that he was offered reinstatement in a meeting with Bertrand on December 2, 1996.

After learning from Bertrand that some employees wanted to return to work, Green notified Bertrand each time an opening occurred in the reprocessing department. On those occasions Respondent offered reinstatement to the former strikers. Employees were selected for recall by drawing names.

Findings—Credibility

The bulk of the record dealing with the November 14 work stoppage is not in dispute. I credit the evidence showing that employees walked off the job on November 14 over a pay dispute. After the initial walk out a union representative joined the striking employees and made demands on their behalf. Respondent's management officials recognized that representative as a union employee. That evidence which shows that the employees engaged in a concerted activity strike by complaining to management about their pay and that they continued to advance their complaint with the assistance of a union agent showed the employees engaged in union and protected concerted activity with knowledge of management.

The primary factual dispute involves whether the striking employees tried to return to work without condition and what they were told by management.

Respondent argued that Plant Manager Green spoke to the employees on the night of November 14 while the employees were with the union representative on an easement just off company property. The union representative made three demands. She demanded that the employees be paid in full for November 6 and 14 and that the employees be assured they would not be punished for their actions on November 14. Green testified that he replied that he could satisfy the employee demands that they be paid for November 14 and that they would not be punished but that he could not assure them they would be paid for November 6.

Green testified that he returned to the plant and within 30 minutes they, management, had made the decision to replace the striking employees. Following that decision several employees were transferred from elsewhere in the plant to reprocessing, in order to get the plant up and running.

It is undisputed that after talking with Green at the easement on November 14, the striking employees tried to return to the plant. The strikers were not allowed to return to the plant and they were told either that they had been fired, that a decision had been made to replace them or both. Those statements were made to the striking employees by security guards at the direction of Respondent's management and by translators of some of Respondent's management officials.

Jorge Lopez, Jose Luis Aguilar, and Hector Vizcarra testified that the employees tried to return to work but were stopped by security guards. Security Guard Jorge Gonzalez who was identified by Security Guard Hicks as the only guard that spoke to the strikers, admitted that the strikers returned to security and said they wanted to come in. Gonzalez testified that he told the employees that Plant Manager Green had told the Guards not to let the strikers in. It is not disputed that the guards did stop the striking employees from returning to the plant. Gonzalez admitted that the striking employees asked, "I[I]f they didn't have jobs" and he replied that he had been told "not to let you guys in."

In view of the witnesses demeanor and the admissions of Jorge Gonzalez, I am convinced that Jorge Lopez, Jose Luis Aguilar, and Hector Vizcarra were correct in their testimony that they tried to return to work on the night of November 14, but were stopped by the security guards and told they had been terminated. Even the testimony of Gonzales which is not credited to the extent it conflicts with the testimony of Lopez, Aguilar, and Vizcarra, shows that when the employees asked if they still had jobs he replied that he had been told not to let them in the plant.

Conclusions

As to whether Respondent illegally discharged the striking employees, I shall consider whether those employees were discharged and, if so, whether the General Counsel proved through persuasive evidence that the Respondent acted out of antiunion animus. *Manno Electric,* 321 NLRB 278 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983).

As shown above, there is no dispute regarding the November 14 work stoppage or that Respondent knew of that action by its employees. Employees concerned with whether they had received full pay for work on November 6, protested to management and walked off the job. That fact was admitted by various witness for Respondent including the plant manager. *Avery Leasing, Inc*., 315 NLRB 576, 580 (1994); *Matador Lines, Inc.,* 323 NLRB 189 (1997); *United States Service Industries,* 314 NLRB 30, 33 (1994). It was also undisputed that a union representative joined the striking employees in protesting to management on the night of November 14 and that management knew of that activity. As shown above, that was admitted by Plant Manager Green. Green testified that the union organizer told him that the employees were on strike and would not return to work until they were paid in full for November 6 and 14 and Respondent agreed that none of the strikers would be punished.

The evidence is in dispute as to whether the strikers were discharged.

As shown above, I am convinced that Jorge Lopez, Jose Luis Aguilar, and Hector Vizcarra were correct in their testimony that the striking employees tried to return to work on the night of November 14, but were stopped by the security guards and told they had been terminated. Even the testimony of Security Guard Jorge Gonzales which is not credited to the extent it conflicts with the testimony of Lopez, Aguilar, and Vizcarra, shows that when the employees asked if they still had jobs he replied that he had been told not to let them in the plant. Such a comment reasonably tends to show that the employees had been terminated.

The evidence is not in dispute but that Security Guard Gonzalez was acting pursuant to directions from Plant Manager Green when he stopped the striking employees from returning to the plant. Gonzalez admitted that he told that to the striking employees.

Moreover, even if I should find that the employees were not told they had been discharged, the evidence shows that Respondent made the decision to refuse to reinstate the strikers early after the strike started. As shown here, Plant Manager Green testified that Respondent made the decision to replace the strikers 30 minutes after he last spoke to them on the night of November 14. Thereafter, Respondent, through statements by its management officials which were translated to the striking employees as shown here, and by statements by the security guards at the direction of management, told the employees they had been discharged or replaced. In view of the fact that those statements were made to the striking employees in the context of their being prevented from returning to their jobs in the plant, the testimony by Security Guard Gonzales illustrated that Respondent conveyed to the employees that they had been discharged. As shown in the testimony of Plant Manager Green, at the time the decision was made to replace the strikers no one had been transferred within the plant to replace any of the strikers. At the time Security Guard Gonzales stopped the strikers, no one had been hired to replace any of the strikers.

I must distinguish between a decision to replace and actual replacement of the striking employees. The evidence shows that Respondent made the decision to replace on the night of November 14 but the actual act of replacing the striking employees was another matter altogether. (See *Gibson Greetings,* 310 NLRB 1286 (1993), where the Board distinguishes between an intent to permanently replace and the actual understanding between employer and replacement as to whether the replacement is permanent.) Respondent has the burden of going forward as to proof that the striking employees were permanently replaced or denied reinstatement for some other legitimate and substantial business justification. *Sunol Valley Golf Club & Recreation Co*., supra, 310 NLRB at 373, citing *NLRB v. Fleetwood Trailer Co*., 389 U.S. 375, 378–379 (1967). Respondent must show that the replacements were hired in a manner that would show that the replacements were regarded by themselves and the employer as having received their jobs on a permanent basis. *Gibson Greetings,* supra.

Respondent failed to prove that it permanently replaced any of the striking employees before they were discharged and before they were told they had been replaced. Some employees were transferred from extrusion to reprocessing on the night of the work stoppage and some thereafter. However, there was no showing that any of those transferred employees were told anything which caused them to regard themselves as having re-

ceived their jobs in reprocessing on a permanent basis. *Sunol Valley Golf Club*, supra.

I find that the evidence failed to show that anyone replaced a single striking employee before Respondent discharged all the strikers and the evidence failed to establish that anyone replaced a striking employee at any time in a manner that would show that the replacement was regarded, as having received his or her job on a permanent basis. *Sunvol Valley Golf Club,* supra.

I find that Respondent engaged in a violation of Section 8(a)(1) and (3) of the Act by discharging the following employees on the night of November 14, 1996, because of their union and protected concerted activity:

Jose Gomez	Anselmo Tapia
Jose Hernandez	Hector Vizcarra
Jesus Hernandez	Oscar Ceniceros
Jorge Lopez	Juan Castillo
Juan Lopez	Ubaldo Loya
Audencio Lopez	Noel Lopez
Franscico Cansino	Andrew Morales
Jose Luis Aguilar	Lemuel Garcia
Hipolito Hernandez	Fortunato Ruiz
Pable Lucero	

Respondent made a number of arguments in its brief. Among those was the argument that none of the striking employees made an unconditional offer to return to work before November 18, 1996. As shown above, I credit the testimony showing that the employees tried to return to their jobs on the night of November 14, but were stopped by security guards. There was no showing that anyone ever said that the employees wanted to return to work without condition. However, I credit the testimony showing that the employees were told they had been fired. Moreover, Security Guard Gonzalez admitted that when the striking employees asked him on November 14 if they didn't have jobs, he replied that he had been told not to let the strikers in the plant. Under the circumstances I am convinced that the striking employees did, by their statements and actions, show to Respondent's agents their desire to return to work without condition.

Even if I should find that the striking employees failed to make an unconditional offer to return to work, I must question whether that was necessary.

As shown here there was evidence that Respondent engaged in conduct in violation of sections of the Act which was contemporanous with the employees' strike. When the employees questioned Mike Wichter about their pay early in their November 14 shift, Wichter told them that the owner was going to pay them but now that the employees were with the Union he had decided not to pay. Subsequently, when the employees tried to return to work later on that shift they were discharged. However, the evidence was not clear that the employees struck because of Wichter's statement. Instead I find that the record failed to establish the Wichter's comments resulted in either the start or the prolongation of the strike. It appears from the evidence that the employees may have struck over their perceived pay shortage regardless of Wichter's comment.

However, the record shows that Respondent's action in discharging the striking employees had the effect of prolonging the strike. As shown above the employees tried to return to work on the night of November 14 but were prevented by security guards. As shown above the employees were told they had been fired. That action had the obvious effect of prolonging the strike. But for Respondent's discharge of the strikers, they would have ended the strike and returned to work. I find that Respondent converted the employees' economic strike to an unfair labor practice strike by illegally discharging the above named employees. *Sunol Valley Golf Club*, 310 NLRB 357, 371 (1993). In view of my findings here, I determine that all the above stated striking employees are entitled to reinstatement with backpay from the time of their discharges on the night of November 14, 1996. It is not necessary for striking employees to make an unconditional offer to return to work when, as here, they have been discharged and are engaged in an unfair labor practice strike.

Respondent suspended Britt Samson and Brian Robinson

Britt Samson has worked for Respondent as an apprentice electrician since September 1995. He testified about seeing union leaflets in the breakroom in November 1996. He attended a union meeting that same night and signed a union authorization card. The following morning Samson and Brian Robinson passed out union fliers at a plant parking lot before work. Samson appeared in the parking lot at 5 a.m. He was scheduled to start work at 6 a.m. He admitted that he does not normally show up that early.

Brian Robinson was an electrical apprentice during November 1996.

A security guard approached and asked Robinson and Samson to leave the property. Both Robinson and Samson told the guard they would not leave. A few minutes later the guard returned and asked if Samson would surrender his union materials including cards and leaflets. Samson refused. Samson noticed two other security guards in the distance and one appeared to be filming Samson with a video camera. He noticed the guard continued to film while he passed union materials to an employee.

After starting work Samson talked to other employees about the Union. His supervisor told him to report to the office. Charles Allgood and Roger Wooley were in the office with Samson. Allgood asked Samson if he had been asked by a security guard to leave the property and if he had left. Samson admitted that he had not left after the guard asked him to. Allgood told Samson that was insubordinate action and he was being suspended for 3 days. Britt Samson asked if Allgood realized that the guard had acted in violation of the law in asking him to leave. Allgood said that he did not care about that. After leaving the office Samson returned to get a copy of the suspension form and he saw Brian Robinson leaving Allgood's office. The parties stipulated that Brian Robinson was disciplined that same day regarding not leaving the parking lot after being directed to do so by a security guard. Allgood told Samson and Robinson to go to personnel and they would have copies of the suspensions. However, Joan Tasker at personnel told Samson and Robinson that she knew nothing about the forms and Samson never did receive a copy.

That evening the main entrance was blocked with barrels and employees were directed to a different entrance on the east side of the plant.

Samson testified there was no rule against being in the parking lot before a work shift and that employees were routinely in the parking lot during nonworktimes. The employee handbook does provide that an employee may be suspended for 3 days for insubordination.

Maintenance Manager Chuck Allgood testified that 61 employees report to him. He issued personnel status change reports to Brian Robinson and Britt Samson on November 14, 1996, after it was reported to him the two employees had refused to leave the premises after directions from security. He received the report from Security Supervisor Glenn Stall-Smith. Allgood testified that Robinson and Samson were in violation of Respondent's no loitering policy by being on the premises over one-half hour before their worktime. He admitted that he suspended both Robinson and Samson for insubordination. Allgood denied that he viewed any videotapes before suspending Robinson and Samson.

Anthony Bertrand is the purchasing manager. He testified that Respondent opened a new entry into the plant on the east side during the union campaign because of congestion at the old entry. He first learned of the union organizing campaign when he saw union people handing out leaflets at the plant about a week after the November 6, 1996, INS raid. Bertrand learned that a decision was made by Respondent to engage in videotaping because of liability concerns over the traffic congestion. He learned that one videotape was made. He admitted that Britt Samson and Brian Robinson were seen in the parking area on the videotape. Neither was in a congested area.

Findings—Credibility

The record is not in dispute that employees Britt Samson and Brian Robinson were suspended from work because each refused to leave Respondent's property after being told to leave by a security guard. At the time they were told to leave both Samson and Robinson were distributing union materials to other employees. There is no dispute but that Respondent videotaped Samson and Robinson in the parking lot distributing union literature to other employees.

Conclusions

As to whether Respondent illegally suspended Samson and Robinson, I shall first consider whether the General Counsel proved through persuasive evidence that the Respondent acted out of antiunion animus. *Manno Electric,* supra; *Wright Line*, supra; *NLRB v. Transportation Management Corp.,* supra.

Samson and Robinson was engaged in union activity when each was asked by a security guard to leave the premises. Both were in Respondent's parking area before the time set for beginning work. The law is firmly established that an employer engages in violation of Section 8(a)(1) by ordering offduty employees engaged in distribution of union literature to leave the premises unless it is shown that the order stems from a business reason. *Olathe Healthcare Center,* 314 NLRB 54 (1994); *Spring City Knitting Co.,* 285 NLRB 426 (1987). There was no evidence of a business reason for the ordering of Samson and Robinson off the premises. Moreover, as shown here, Respondent videotaped Samson and Robinson engaged in distribution of union literature.

Respondent contended that it had no knowledge that Samson and Robinson were engaged in union activities. That argument was refuted by the credited evidence. The evidence showed that Respondent's agents, its security guards, knew about Samson and Robinson's activity in the parking lot. Moreover, the security guards videotaped Samson and Robinson engaged in union activity in the parking lot and Respondent obtained the videotape.

Respondent now contends that Samson and Robinson were ordered off the premises because they were in violation of its no loitering policy. However, the record does not support Respondent. Neither Samson nor Robinson were disciplined for loitering. Nothing was said to them by either the security guards or supervision about loitering and Respondent failed to show that it had a written no loitering rule.

I find that the credited evidence shows that Respondent engaged in unlawful conduct by ordering Samson and Robinson to leave the premises while they were engaged in distribution of union literature in a nonwork area during their nonworktime. The record shows antiunion animus. The General Counsel proved prima facie, that Samson and Robinson were suspended from work because of their union activity. Respondent, on the other hand, failed to show that it would have suspended Samson and Robinson in the absence of their union activities. There was no showing that Respondent has ever disciplined anyone for conduct similar to that of Samson and Robinson that did not involve the Union.

Respondent Discharged Jason Snow

Jason Snow started working for Respondent in August 1996. He worked on the dye crew on the morning shift under Supervisor James Qualls. He was originally placed on a 120-day probationary period. He reported to three leadmen, Trinidad Rivera, Lee Marsh, and Andy Farmer.

Snow testified that he received positive feedback from his leadmen and James Qualls regarding his work. Snow was never disciplined for his work performance.

During the union organizing campaign Jason Snow handed out union pamphlets, attended union meetings and talked to other employees about the Union. He was questioned about union activity by his leadmen. The three leadmen asked him frequently about what percentage of the employees had signed up for the Union and if Snow felt the Union was going to get in.

Snow admitted that he missed some work because of court dates. He talked to James Qualls about his need to miss work. Qualls told him that he would make an exception to the absentee rule for Snow because Snow was turning into a "pretty good dye crew mechanic."

Jason Snow was terminated on December 2, 1996. James Qualls told him that he had scored average or below average on his performance evaluation and, out of concern that his performance would get worse after his probationary period, they had decided to let him go. Qualls said that Snow demonstrated a lack of motivation and initiative and they felt he could not get the jobs done without direct supervision over his work.

After his discharge, as Snow was being escorted out of the building by Leadman Andy Farmer, he asked Farmer if he felt Snow was being treated appropriately. Farmer answered the "way he was going to answer everybody else the rest of the day, which is, he would take the Fifth." Farmer also said to Snow, "I just basically want to tell you one thing; I think you got a raw deal." Later that night Snow went by the home of Leadman Trinidad Rivera. Rivera said that "it was his opinion that [Snow] shouldn't have been terminated and he asked [Snow] to keep that to myself because it could threaten [Rivera's] job stability."

James Qualls denied that he discussed the Union with Jason Snow. He denied that anyone told him whether Snow was a supporter of the Union and that he had suspicions as to whether Snow supported the Union. Qualls identified a status change form showing that Jason Snow was separated from his employment because he "*Did not make probation unsuitable for employment.*"

According to Qualls he decided to terminate Snow at the end of Snow's probationary period because Snow failed to ever obtain safety shoes; Snow failed to obtain required tools; and Snow was lazy. Qualls testified that Snow had an attendance problem that Qualls "tried to work with him on." That was one of the issues that helped seal Snow's fate. James Qualls testified that he consulted with the leadmen as to their opinion of Snow's work. He denied that the union organizing campaign had anything to do with Snow's discharge.

Trinidad Rivera testified that Jason Snow performed poorly during his probationary period. Snow was not safety oriented. He wore his safety glasses on top of his head most of the time and talked often of leaving the Company. Snow said the Company was a sweat shop. Snow was not a hard worker. Rivera made a recommendation to James Qualls regarding his opinion of Snow. Rivera testified that he knew that Snow was active in the union campaign but he denied that he mentioned that to James Qualls. Rivera testified under cross-examination that he completed written evaluations on employees including Jason Snow and that he rated the employees from 1 to 10. He turned those evaluations in to James Qualls. Andy Farmer admitted that he also gave his supervisor a written evaluation of Snow. The parties stipulated that Lee Marsh would testify similar to Trinidad Rivera.

Trinidad Rivera agreed that he met with Snow after Snow's discharge. He told Snow that he gave what he felt was a fair evaluation. He denied saying to Snow that he had given Snow a good evaluation. Rivera denied giving Snow a special commendation for work on a 1986 dye project.

Andy Farmer testified that Jason Snow's job performance was not up to par. Snow frequently said that he was not happy working for Respondent. Snow said that it was like working in a sweat box. On one occasion Snow said in front of other employees that Farmer was a dick. Farmer told James Qualls of that occurrence. Farmer denied that Snow received a special commendation in connection with the 1986 dye project.

Findings—Credibility

As shown above, on the basis of the demeanor of the witnesses and the full record I credit the testimony of Jason Snow. To the extent their testimony differs I do not credit James Qualls, Andy Farmer, or Trinidad Rivera.

Conclusions

As to whether Respondent illegally discharged Jason Snow, I shall first consider whether the General Counsel proved through persuasive evidence that the Respondent acted out of antiunion animus. *Manno Electric,* supra; *Wright Line*, supra; *NLRB v. Transportation Management Corp.,* supra.

As shown here, the credited evidence clearly established that Jason Snow engaged in prounion activities while employed by Respondent and that Respondent knew that Snow was campaigning on behalf of the Union. As shown above, I credit the testimony showing that the three leadmen questioned Snow about what percentage of the employees had signed up for the Union and if Snow felt the Union was coming in.

The record established union animus. As shown above Respondent engaged in numerous violations of Section 8(a)(1) and (3) of the Act and its actions establish that it was strongly opposed to the Union and willing to engage in unlawful conduct including discharge, to defeat the Union.

I am convinced that the General Counsel proved a prima facie case in support of the allegation that Snow was terminated because of his union activities. *Manno Electric,* supra; *Wright Line*, supra; *NLRB v. Transportation Management Corp.,* supra.. I shall consider whether Respondent proved that it would have discharged Snow in the absence of union activity.

As shown above Respondent showed on his termination that Snow was discharged because he did not make probation and was unsuitable for employment. However, neither that nor the subsequent argument Respondent made to support the discharge are supported by credited evidence. There was nothing in Respondent's records to show that Snow was ever disciplined or criticized for his work before his discharge. The only disciplinary record prepared before Snow's discharge, indicated that Snow had been absent from work. However, the record showed that Snow did not miss enough work to subject him to discharge.

Leadmen Farmer and Rivera testified to having prepared written evaluations of Snow. However, none of those evaluations were produced at trial. The only written document regarding Snow other than regarding absenteeism, was a document prepared after these unfair labor practice charges were filed. That document written by Supervisor Qualls, added to the reasons for Snow's discharge. In addition to the contention that Snow had not satisfactorily performed during his probationary period, Qualls added that Snow had failed to supply required equipment including safety shoes. Counsel for the General Counsel correctly points out that such an effort demonstrates that Respondent may be engaged in pretext in an effort to justify Snow's discharge. *Limestone Apparel Corp*., 255 NLRB 722 (1981), enfd. sub nom. 705 F.2d 799 (6th Cir. 1982).

I find that the General Counsel proved that Respondent discharged Jason Snow because of Snow's union activities; that Respondent may have engaged in pretext in order to justify its discharge of Snow; and that Respondent failed to prove that it would have discharged Jason Snow in the absence of union activities.

Conclusions of Law

1. Poly-America, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Union of Needletrades, Industrial and Textile Employees is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by promulgating and enforcing a no solicitation no-distribution rule which prohibits employees from engaging in union activities on Respondent's premises during break, lunch, before and after work; disparaging the Union by telling its employees that the Union is no good, had threatened to burn the plant and would charge up to $300 in weekly or monthly fees; by threatening the employees with loss of benefits if they select the Union as their bargaining representative; by threatening its employees that it had decided to pay employees for time off because of an INS raid but had changed its mind because the employees went to the Union; by interrogating its employees about their union activities; by threatening its employees with isolation and discharge if they signed union authorization cards; by threatening that the Union will force those employees that sign with the Union to strike and engage in picketing; by videotaping its employees union activities; by confiscating union materials from employees; by telling its employees they had been fired because they engaged in a Union and a protected concerted work stoppage; by threatening to close and reopen the plant because of its employees' union

activities; by conditioning reinstatement of employees that engaged in a union supported, protected concerted work stoppage, upon their responding to the offer of reinstatement within a short specified period of time without proper business justification; and by selectively trashing union materials in the employees' breakroom; has engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent, by terminating the below named employees because they engaged in a protected concerted work stoppage that was subsequently supported by the Union; by converting the employees' economic work stoppage into an unfair labor practice strike; by illegally discharging employee Jason Snow and by illegally suspending employees Britt Samson and Brian Robinson; because of their union affiliation and preference has engaged in conduct violative of Section 8(a)(1) and (3) of the Act:

Jose Gomez	Anselmo Tapia
Jose Hernandez	Hector Vizcarra
Jesus Hernandez	Oscar Ceniceros
Jorge Lopez	Juan Castillo
Juan Lopez	Ubaldo Loya
Audencio Lopez	Noel Lopez
Franscico Cansino	Andrew Morales
Jose Luis Aguilar	Lemuel Garcia
Hipolito Hernandez	Fortunato Ruiz
Pable Lucero	

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has illegally terminated the below listed employees and has illegally suspended Britt Samson and Brian Robinson, in violation of sections of the Act, I shall order Respondent to offer the below listed employees immediate and full employment to each person's former position or, if that position no longer exists, to a substantially equivalent position without prejudice to their seniority and other rights and privileges, discharging if necessary all employees hired to replace them. I further order Respondent to make the below listed employees whole for all loss of earnings suffered as a result of the discrimination against them. Backpay shall be computed as described in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I recommend that Respondent be ordered to expunge from its records any reference to the unlawful terminations and suspensions and to give the below listed employees, Samson and Robinson, written notice of such expunction and to inform all those employees that Respondent's unlawful conduct will not be used as a basis for further personnel actions.

Jose Gomez	Anselmo Tapia
Jose Hernandez	Hector Vizcarra
Jesus Hernandez	Oscar Ceniceros
Jorge Lopez	Juan Castillo
Juan Lopez	Ubaldo Loya
Audencio Lopez	Noel Lopez
Franscico Cansino	Andrew Morales
Jose Luis Aguilar	Lemuel Garcia
Hipolito Hernandez	Fortunato Ruiz
Pable Lucero	Jason Snow

On the foregoing findings, conclusions of law, and the entire record, I issue the following recommended[1]

ORDER

The Respondent, Poly-America, Inc., Grand Prairie, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and enforcing a no-solicitation/no-distribution rule which prohibits employees from engaging in union activities on Respondent's premises during break, lunch, before and after work.

(b) Disparaging the Union by telling employees that the Union is no good, had threatened to burn the plant and would charge up to $300 in weekly or monthly fees.

(c) Threatening employees with loss of benefits if they select the Union as their bargaining representative.

(d) Threatening employees that it had decided to pay employees for time off because of an INS raid but had changed its mind because the employees went to the Union.

(e) Interrogating employees about their union activities.

(f) Threatening employees with isolation and discharge if they sign union authorization cards.

(g) Threatening employees that the Union will force those employees that sign with the Union to strike and engage in picketing.

(h) Videotaping employees' union activities.

(i) Confiscating union materials from employees.

(j) Telling employees they have been fired because they engaged in a union and protected concerted work stoppage.

(k) Threatening employees that it will close and reopen the plant because of its employees' union activities.

(l) Conditioning reinstatement of employees that engaged in a union supported, protected concerted work stoppage, upon their responding to the offer of reinstatement within a short specified period of time without proper business justification.

(m) Selectively trashing union materials in the employees' breakroom.

(n) Discharging, suspending or otherwise discriminating against employees because they engaged in union or protected concerted activities regarding terms and conditions of employment with their fellow employees or with management, or otherwise engage in protected concerted activities for mutual aid and protection.

(o) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, offer immediate and full reinstatement to the below named employees to each of their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their senior-

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ity or any other rights or privileges previously enjoyed, and make them whole for all loss of earnings and other benefits suffered as a result of the discrimination against them plus interest, in the manner set forth in the remedy section of the decision:

Jose Gomez	Anselmo Tapia
Jose Hernandez	Hector Vizcarra
Jesus Hernandez	Oscar Ceniceros
Jorge Lopez	Juan Castillo
Juan Lopez	Ubaldo Loya
Audencio Lopez	Noel Lopez
Franscico Cansino	Andrew Morales
Jose Luis Aguilar	Lemuel Garcia
Hipolito Hernandez	Fortunato Ruiz
Pable Lucero	Jason Snow

(b) Within 14 days of this Order, remove from its files any reference to the termination of the above named employees and to the November 1996 suspensions of Britt Samson and Brian Robinson, and notify all those employees that this has been done and that evidence of those disciplinary actions will not be used as a basis for future personnel actions.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Grand Prairie, Texas, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 7, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director, Region 16, a sworn certification of a responsible official on a from provided by the Region attesting to the steps that the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."